

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
Civil Action No. 08-2948

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JAN 08 2009

JOEL SCHNEIDER
U.S. Magistrate Judge

In Regard to the Matter of:

Bayside State Prison
Litigation

OPINION/REPORT
OF THE
SPECIAL MASTER

JEFFREY WISE

- vs -

WILLIAM H. FAUVER, et al,

Defendants.

* * * *

FRIDAY, DECEMBER 12, 2008

* * * *

BEFORE THE HONORABLE JOHN W. BISSELL, SPECIAL MASTER

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4 Transcript of proceedings in the above
5 matter taken by Theresa O. Mastroianni, Certified
6 Court Reporter, license number 30X100085700, and
7 Notary Public of the State of New Jersey at the
8 United States District Court House, One Gerry Plaza,
9 Camden, New Jersey, 08102, commencing at 12:56 PM.
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1 JUDGE BISSELL: I'm now reopening
2 proceedings in the case of Jeffrey Wise and that is
3 docket number 08-2948.

4 This opinion/report is being issued
5 pursuant to the directives of the Order of Reference
6 to a Special Master and the Special Master's
7 Agreement and the guiding principles of law which
8 underlie this decision to be applied to the facts
9 upon which it is based as set forth in the jury
10 instructions in the Walker and Mejias jury charges to
11 the extent applicable to the allegations of Mr.
12 Wise.

13 As finalized after review under Local
14 Civil Rule 52.1, this transcript will constitute the
15 written report required under paragraph seven of the
16 Order of Reference to a Special Master.

17 Jeffrey Wise was housed in Trailer
18 Number Two. He testified to two incidents. One of
19 them involved a strip search in the day room of his
20 unit which albeit somewhat demeaning and embarrassing
21 (particularly in the presence, at least as he
22 alleges, of a female corrections officer, Ms. Beck),
23 did not result in any injury and I find that conduct,
24 therefore, is not actionable here.

25 He then describes a second occasion

1 which appears to involve the extraction of the
2 members of Trailer Number Two to the gym for the
3 purpose of Trailer Number Two being searched. And
4 that description appears essentially at page 93
5 beginning with line nine.

6 Question: Let me move to the second
7 occasion that you mentioned, the day that your
8 trailer was emptied and you went to the gym. I want
9 to focus on that. What happened to you that day?

10 Answer: On that day, as you know this
11 is my first time in this institution so I really
12 didn't know where I was going, you know, where
13 certain areas were located such as the gym. We were
14 forced to lock our hands behind our back as if we
15 were handcuffed. You know, if you were handcuffed as
16 your hands would be if you were handcuffed and look
17 down at the ground and proceed to the gym.

18 On that occasion my tooth was knocked
19 out.

20 Question: How did that happen?

21 Answer: Well, on our way to the gym
22 there was, like, a little area, like right before you
23 get to the mess hall area. It's like -- I don't want
24 to say it was, like, some kind of traffic control
25 center or a smaller version of the traffic control

1 center, but it was like a little passageway and the
2 officers were stationed there. Several officers, I
3 don't know the exact amount.

4 And when you get to the area, you know,
5 they would converge on you and as they converged on
6 me one of them knocked my tooth out.

7 Question: Did he hit you with his fist
8 or hand or object? How did it happen?

9 Answer: I would like to say his fist,
10 but to be honest, I don't know.

11 Question: How is it that you didn't
12 see.

13 Answer in part: Well as I said, we
14 were forced to look down at the ground.

15 So his testimony was quite clear that
16 he had, as he later described it, one of his front
17 teeth knocked out. And it was identified, frankly,
18 as his front left tooth according to his own
19 testimony.

20 However, Doctor Colella was called to
21 review this man's dental chart which was introduced
22 into evidence as D-360. The evidence involved there
23 includes statements regarding examinations conducted
24 on the 24th of September and the first of October,
25 1997; a matter of just a few weeks in both instances

1 after the supposed incident to which Mr. Wise
2 testifies. And it's perfectly clear both from that
3 chart and from those entries that he did not present
4 himself on either of those occasions missing a
5 knocked out front tooth.

6 It did appear that a couple of other
7 teeth, number 18 and 29, might require some work and,
8 in fact, number 18 was extracted on the 10th of
9 October and number 29 was scheduled for future
10 extraction. But the tooth involved here is tooth
11 number nine on this chart and although there is a
12 modest notation that indicates some problem below the
13 gum level albeit one not easily described or analyzed
14 by Doctor Colella, once again there is absolutely
15 nothing to demonstrate the absence of that tooth in
16 his mouth a mere matter of weeks after the alleged
17 assault upon him.

18 This was, indeed, Mr. Wise's only
19 alleged injury, namely, the supposed knocking out of
20 his tooth at the time that the Trailer Number Two
21 inmates were taken to and from the gym. And the
22 contemporaneous documentary evidence as analyzed by
23 Doctor Colella, who certainly has no interest of his
24 own to protect in this case, completely refutes that.

25 Finally, although not every item of

1 evidence has been discussed in this opinion/report,
2 all evidence presented to the Special Master was
3 reviewed and considered.

4 For the reasons set forth above, I
5 recommend in this report that the district court
6 enter an order and judgment of no cause for action
7 with regard to Jeffrey Wise.

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C E R T I F I C A T E

I, Theresa O. Mastroianni, a Notary Public and Certified Shorthand Reporter of the State of New Jersey, do hereby certify that the foregoing is a true and accurate transcript of the testimony as taken stenographically by and before me at the time, place, and on the date hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in the action.

Theresa O. Mastroianni, C.S.R.
Notary Public, State of New Jersey
My Commission Expires May 5, 2010
Certificate No. XIO857
Date: January 2, 2009